

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 18-CR-457(AMD)

: U.S. Courthouse

: Brooklyn, New York

-against- : TRANSCRIPT OF

: STATUS CONFERENCE

HUAWEI TECHNOLOGIES CO., : June 19, 2019

LTD. ET AL, : 11:30 a.m.

Defendants.

BEFORE: HONORABLE ANN M. DONNELLY, U.S.D.J.

APPPEARANCES.

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14 THE COURTROOM DEPUTY: All rise.

15 THE COURT: Hi. Everybody can sit down.

16 Are you all going to talk?

17 MR. SOLOMON: Simultaneously.

18 THE COURTROOM DEPUTY: This is criminal cause for a
19 status conference, docket number 18-CR-457, USA versus Huawei
Technologies, et al.

20 Counsel, state your appearance, government first.

21 MR. SOLOMON: Good morning, Your Honor, Alex Solomon
22 for the government and, indicating everyone in a clockwise
23 manner, Julia Nestor, Kaitlin Farrell, Christian Nauvel, Sarah
24 Evans, Thea Kendler, David Kessler and I messed up the order
25 slightly. We're all from the DOJ. Good morning, Your Honor.

1 THE COURT: Okay.

2 MR. COLE: Good morning, Your Honor, James Cole on
3 behalf of Huawei and with me at the defense table is David
4 Bitkower and Michael Levy.

5 THE COURT: Hi. So, we have just a couple of things
6 to do today. I'm just going to start with the motion for the
7 bill of particulars. I think there was a production recently,
8 I just think we need to set a new deadline for that. Do you
9 have a suggestion?

10 MR. COLE: Yes, Your Honor, we discussed that with
11 the government and we think that that should trail the
12 discovery because it really doesn't make sense to start a bill
13 of particulars until we know what's in the discovery and have
14 some sense of what we need to really ask for. So, we'd like
15 to trail it indefinitely until there's a substantial
16 compliance with discovery and then we can confer again.

17 THE COURT: Do you have any thoughts?

18 MR. SOLOMON: We agree with that. We discussed with
19 defense counsel that the discovery is a process that has
20 basically just started. Your Honor authorized the protective
21 order on the 10th of June. Since that date we produced well
22 more than 700,000 pages of discovery. We're going to continue
23 at a good clip. Our thought is let's assess where we are at a
24 status conference two or three months down the road.

25 THE COURT: So, do you want me to adjourn it without

1 a deadline or do you want me to give you a deadline for the
2 next status conference?

3 MR. COLE: I think the preference would be adjourn
4 it without a deadline, then we'll confer again once discovery
5 is had. Obviously they've given us a volume of discovery,
6 we're not sure how much more volume there is. That's
7 difficult for them to define so...

8 THE COURT: All right. Well, there was a stipulated
9 protective order that I signed on June 10th. All right. So,
10 I guess the next thing to do is to give you a schedule for
11 responding now that the government has filed the version of
12 the motion that's -- I directed them to lift some of the
13 redactions. So, I think the next thing to do is to give you a
14 deadline to oppose it. I mean I suppose there's always the
15 possibility that you'll agree that you should not be on the
16 case but I'm going to assume you're not going to feel that way
17 so.

18 MR. COLE: Well, Your Honor, we've discussed with
19 the government a schedule for this. I would like an
20 opportunity to address with Your Honor the reasons why I
21 stated what I stated in my declaration. That's obviously not
22 going to be able to be done in open court, so I wanted to get
23 a sense from Your Honor as to how you would prefer that,
24 whether it's in writing or part of an oral presentation with
25 an opportunity to ask questions which I think would, in my

1 view, be probably more efficient and effective and we can
2 figure out a time to do that.

3 The government and we have talked about a date for
4 our response being July 19th, a date for their reply being two
5 weeks after that and then scheduling a hearing which probably
6 is going to be kind of a mixed hearing, some open, some
7 closed, some closed with just me and without the other
8 counsel.

9 MR. SOLOMON: That's correct, Your Honor, and I
10 think we were contemplating some sort of hearing/oral argument
11 partially classified, partially unclassified sometime in
12 August. I think, based on the travel schedules, we were
13 discussing perhaps late August. Obviously we're not aware of
14 the Court's availability during that time.

15 THE COURT: I know this will shock you, I might take
16 a vacation at some point but we can figure out a date. It may
17 have to be after Labor Day for the argument. I'm around, I
18 have a couple of trials scheduled and I am going to be away
19 the last part of the month. So, does that --

20 MR. COLE: I think that sounds reasonable, Your
21 Honor.

22 THE COURT: All right. Give me just a second.

23 (Pause while the Court confers with the law clerk.)

24 THE COURT: I'm trying to convince my clerk to stay
25 past her time of leaving so she can -- we had in mind a

1 schedule that would accommodate her but I understand the
2 parties' positions.

3 So, the opposition will be, what did you say,
4 July 19?

5 MR. COLE: That's correct, Your Honor.

6 THE COURT: And was it two weeks from that?

7 MR. SOLOMON: That would be August 2nd, Your Honor.

8 THE COURT: Okay. And let me just confer with
9 Ms. Greene about our schedule.

10 (Pause while the Court confers with the courtroom
11 deputy.)

12 THE COURT: Wednesday the 4th, is that okay with you
13 all?

14 MR. SOLOMON: Yes, Your Honor.

15 THE COURT: That will be for some kind of an oral
16 argument.

17 MR. COLE: Whatever nature or shape it may take.

18 THE COURT: At 10:30, is that okay?

19 MR. SOLOMON: Yes, Your Honor.

20 THE COURT: September 4th at 10:30, that will be
21 something, all right.

22 I don't know that we have a whole lot more to
23 discuss.

24 MR. COLE: My list is I think finished.

25 MR. SOLOMON: I think I had three additional

1 matters, Your Honor, all of them are relatively small.

2 The first one was just noting for the record we have
3 filed our CIPA 2 motion and, as we indicated in the motion,
4 we're seeking a CIPA 2 status conference after the Court
5 adjudicates our motion to disqualify.

6 THE COURT: Yes.

7 MR. SOLOMON: Secondly, although we do have a
8 stipulated protective order, there are some outstanding issues
9 that may require judicial attention. One of the issues
10 potentially requiring judicial attention is the defense desire
11 to share certain discovery materials with Cathy Meng who is in
12 extradition proceedings in Canada. We're attempting to
13 resolve that in good faith. If we're unable to, we'll address
14 the Court.

15 THE COURT: All right.

16 MR. SOLOMON: Finally, we'd obviously ask for a
17 status conference and seek to exclude time.

18 THE COURT: Well, I was going to exclude the time.
19 Let me just make sure that there's nothing else that we have
20 to ask.

21 (Pause while the Court confers with the law clerk.)

22 THE COURT: Maybe I've missed this, I think Skycom
23 was supposed to be arraigned in May, have they been arraigned?

24 MR. SOLOMON: No, we have been unable to serve them.

25 THE COURT: Okay.

1 Do you want to make the next conference date the
2 date of that oral argument?

3 MR. SOLOMON: I think, given travel schedules, that
4 probably makes the most sense.

5 THE COURT: Okay. So, this case is going to be
6 adjourned until that September 4th date. That time is
7 excludable in the interests of justice. I think I designated
8 this a complex case already.

9 MR. SOLOMON: That's correct, Your Honor.

10 THE COURT: Due to the complexities of the case and
11 given the outstanding matters that have to be decided.

12 Is there anything else that anybody wants to put on
13 the record?

14 MR. SOLOMON: No, thank you, Your Honor.

15 MR. COLE: Nothing here, Your Honor.

16 THE COURT: Okay. All right.

17 Thanks so much, everybody.

18 MR. LEVY: Thank you, Your Honor.

19 (Time noted: 11:45 a.m.)

20 (Continued on next page.)

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